IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MARK ALAN DOWNS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12359 Trial Court No. 3KN-11-1226 CR MEMORANDUM OPINION No. 6447 — April 5, 2017

Appeal from the District Court, Third Judicial District, Kenai, Sharon A.S. Illsley, Judge.

Appearances: Nathan Lockwood, Assistant Public Defender, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Craig C. Sparks, Assistant District Attorney, Kenai, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge SUDDOCK.

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Pursuant to a plea agreement, Mark Alan Downs pleaded guilty to driving under the influence[1] and driving while license suspended.[2] Downs was sentenced to a composite term of 720 days with 480 days suspended and 5 years of probation.

Downs now argues that his sentence is excessive and that the judge abused her discretion in imposing a no-alcohol probation condition. For the reasons explained here, we affirm the district court's judgment.

Facts and proceedings

At approximately 10:38 p.m. on July 22, 2011, the Kenai Police Department received a report that a Ford pickup truck towing a drift boat was swerving and crossing over the center and white fog lines on the Kenai Spur Highway. An officer stopped the truck and made contact with the driver, Mark Alan Downs. The officer noted that Downs's eyes were bloodshot, his speech was "thick," and his breath smelled like alcohol. Downs failed two sobriety tests — counting backwards and horizontal gaze nystagmus — and was arrested for driving under the influence (DUI) and driving while license suspended (DWLS). Upon arriving at the correctional facility, Downs was given a DataMaster test which yielded a blood-alcohol concentration of .157 percent.

Downs pleaded guilty to both charges, and he agreed to open sentencing. District Court Judge Sharon A.S. Illsley sentenced Downs to 360 days with 200 days suspended for the DUI conviction and 360 days with 280 days suspended for the DWLS conviction. The judge also imposed 5 years of probation with a no-alcohol condition. This appeal followed.

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[1] AS 28.35.030(a).

[2] AS 28.15.291(a)(1).

Downs's sentence

Downs argues that his composite sentence of 720 days with 480 days suspended and 5 years of probation is excessive. We review sentences under the "clearly mistaken" standard, a deferential standard of review that recognizes a "permissible range of reasonable sentences which a reviewing court, after an independent review of the record, will not modify."[3]

In 1994, we affirmed Downs's similar sentence for DUI and DWLS convictions, finding that a composite sentence of 720 days with 300 days suspended was not excessive given Downs's history of repeated serious driving offenses.[4] We have upheld similar sentences in other cases.[5] And in 2010, we affirmed Downs's sentence of 360 days to serve for driving with a revoked license, noting that the sentencing court had classified Downs as a worst offender and also "a dangerous offender for sentencing purposes" because of his repeated convictions.[6]

Although the judge declined to find that Downs was a worst offender in this case, she told Downs that his record "would warrant a worst-offender finding." She additionally stated that, "given [Downs's] history, there seems every reason [to believe he is] going to keep ... drinking and driving."

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[3] *McClain v. State*, 519 P.2d 811, 813 (Alaska 1974).

[4] *Downs v. State*, 872 P.2d 1229, 1230 (Alaska App. 1994).

[5] *See, e.g.*, *Alward v. State*, 767 P.2d 1175, 1177 (Alaska App. 1989).

[6] *Downs v. State*, 2010 WL 668951, at *1-2 (Alaska App. Feb. 24, 2010) (unpublished).

Finally, the judge specifically considered the *Chaney* criteria of isolation, deterrence, and rehabilitation when she imposed Downs's sentence.[7] We accordingly conclude that the sentence is not clearly mistaken.

Downs's no-alcohol probation condition

Downs also appeals his condition of probation that prohibits him from possessing, consuming, or buying alcohol for the duration of his 5-year probation term. He argues that the district court erred in imposing this condition because the court failed to consider whether the condition was "necessary" to Downs's rehabilitation.

But the standard is not whether a challenged probation condition is necessary for a defendant's successful rehabilitation. Instead, we will reverse a trial court's imposition of a probation condition only when we find that the judge abused her discretion in determining that the condition was *reasonably related* to the defendant's rehabilitation.[8]

Here, Downs not only pleaded guilty to driving under the influence of alcohol, but the record also establishes that Downs has numerous prior DUI convictions.[9] Furthermore, Downs admitted at sentencing that his "judgment skills go down" when he consumes alcohol, he is "well aware of that," and he is "willing to make those changes." And the judge considered Downs's own interests in changing his behavior, saying: "I

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[7] *See State v. Chaney*, 477 P.2d 441, 443-44 (Alaska 1970); *see also* AS 12.55.005 (codifying the *Chaney* criteria).

[8] *See Thomas v. State*, 710 P.2d 1017, 1019 (Alaska App. 1985) (citing *Roman v. State*, 570 P.2d 1235, 1240 (Alaska 1977)).

[9] *See Downs v. State*, 872 P.2d 1229 (Alaska App. 1994); *Downs v. State*, 2010 WL 668951 (Alaska App. Feb. 24, 2010) (unpublished); *Downs v. State*, 1996 WL 740932 (Alaska App. Dec. 26, 1996) (unpublished).

think this is kind of your last shot, realistically. Either you get it, or next time you're going to be back on a felony."

Based on Downs's history of alcohol-related offenses, Judge Illsley did not abuse her discretion in imposing the no-alcohol probation condition.

Conclusion

We AFFIRM the judgment of the district court.